



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

PLASSER AMERICAN CORPORATION

Registration No. VAR050376

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §62.1-44.15(8a) and §62.1-44.15(8d), between the State Water Control Board and Plasser American Corporation, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions:

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Regulation" means 9 VAC 25-151-10 *et seq.* - the Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Storm Water Discharges Associated with Industrial Activity.

7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Permit" means VPDES General Permit No. VAR05 for Storm Water Discharges Associated with Industrial Activity, which became effective June 30, 1999, was reissued July 1, 2004 and expires on June 30, 2009.

SECTION C: Finding of Facts and Conclusions of Law

1. Plasser American Corporation ("Plasser") operates a facility at 2001 Myers Road, Chesapeake, Virginia ("facility") at which railroad maintenance machinery is manufactured and overhauled. Storm water discharges from the facility are subject to the Permit, which was effective July 1, 2004 and expires on June 30, 2009, through Registration No. VAR050376. Storm water discharges from the facility were previously subject to the Permit through Registration No. VAR550123, which was effective June 30, 1999 and expired June 30, 2004.
2. On December 3, 2003 DEQ staff conducted a routine compliance inspection of the facility and noted deficiencies in facility inspections, employee training, quarterly visual monitoring of storm water discharges, and maintenance of storm water outfalls, and the failure to develop a Storm Water Pollution Prevention Plan ("SWP3"), among other things. These deficiencies were referenced in Warning Letters issued to Plasser on December 10, 2003 and April 27, 2004 and in a Notice of Violation ("NOV") issued on June 1, 2004. The NOV was resolved informally as Plasser subsequently submitted to DEQ the required documentation of Permit compliance, including a completed SWP3, and received additional compliance assistance from DEQ.
3. During a DEQ facility inspection on September 12, 2007 DEQ staff documented Permit compliance deficiencies with respect to monitoring requirements, including the following: quarterly visual monitoring of storm water discharges as required by Part I.A.1.a of the Permit and Part 6.0 of the SWP3 had not been conducted since December 3, 2005.
4. During a DEQ facility inspection on September 12, 2007 DEQ staff documented Permit compliance deficiencies with respect to general Permit conditions, including the following: facilities and systems of storm water control installed or used to achieve compliance with the Permit (i.e., storm water outfalls) were not properly maintained as required by Part II.Q of the Permit.
5. Plasser is required to develop and implement a facility SWP3 according to requirements outlined in Part III and Part IV.B (for Sector AB – Transportation Equipment, Industrial, or Commercial Machinery) of the Permit.
6. During a DEQ facility inspection on September 12, 2007 DEQ staff documented Permit compliance deficiencies, with respect to SWP3 requirements, including the following:
 - a. The facility SWP3 site map did not accurately identify the current directions of storm water flow, locations of potential pollutant sources, locations of storm water outfalls, and descriptions of non-storm water discharges as required by Part III.B.2.c (1), (4), (7) and (8) of the Permit and Part 3.3 of the SWP3.

- b. All exposed areas of Drainage Area No. 1 and Drainage Area No. 2, including but not limited to the yard basins, were not being kept in a clean, orderly manner in order to minimize the contribution of pollutants to storm water discharges as required by Part III of the Permit and Part 4.1 and Part 4.2 of the SWP3.
 - c. Facility employees had not been trained in the components and goals of the SWP3 as required by Part III of the Permit and Part 7.2 of the SWP3.
 - d. The annual comprehensive site compliance evaluation required by Part III.E of the Permit and Part 6.0 of the SWP3 had not been performed for 2006. The annual site compliance evaluation for 2005 was incomplete and did not address all the elements required by the foregoing provisions of the Permit and the SWP3.
 - e. The SWP3 had not been updated since June 2005 to reflect changes in design, construction, operation, or maintenance at the facility that could have a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility as required by Part III.G.1 of the Permit and Part 7.7 of the SWP3.
- 7. Plasser violated Permit condition Part I.A.1.a. as noted in paragraph C.3 of this Order.
 - 8. Plasser violated Permit condition Part II.Q as noted in paragraph C.4 of this Order.
 - 9. Plasser violated Permit conditions Part III, Part III.B.2.c.(1), (4), (7) and (8), Part III.E, and Part III.G.1 as noted in paragraph C.6 of this Order.
 - 10. On October 10, 2007, DEQ issued Notice of Violation ("NOV") W2007-09-T-0005 to Plasser. The NOV advised Plasser of the violations of Permit conditions Part I.A.1.a, Part II.Q, Part III, Part III.B.2.c.(1), (4), (7) and (8), Part III.E, and Part III.G.1 and SWP3 conditions Part 3.3, Part 4.1, Part 4.2, Part 6.0, Part 7.2 and Part 7.7 revealed during the inspection conducted by DEQ staff on September 12, 2007.
 - 11. Plasser responded by electronic mail on September 17, 2007 to the effect that it had remedied many of the housekeeping deficiencies noted during the compliance inspection including cleaning out the yard basins in the wash down areas referred to in subparagraph C.6.b of this Order (Drainage Area No. 1 and Drainage Area No. 2).
 - 12. Plasser responded further by electronic mail on November 12, 2007 to the effect that quarterly visual examinations of storm water quality had been conducted and documented in October 2007; the contract for general maintenance of the facility had been expanded to include the storm water outfalls; responsibility for ensuring compliance with the Permit and the SWP3 had been assigned to a Plasser executive officer; an employee was being hired whose responsibility would be implementation of the SWP3; and SWP3 training and compliance inspections would resume in December 2007 under the direction of the new employee.

SECTION D: Agreement and Order

Accordingly the State Water Control Board by virtue of the authority granted it by Va. Code § 62.1-44.15(8a) and (8d), orders Plasser, and Plasser agrees to perform the actions described in Appendix A of this Order. In addition, the Board orders Plasser, and Plasser voluntarily agrees to pay a civil charge of \$8,610 within 30 days of the effective date of this Order, in settlement of the violations cited in this Order. The payment shall include Plasser's Federal Identification Number and shall reference that payment is being made as a requirement of this Order. Payment shall be made by check, payable to the Treasurer of Virginia, delivered to:

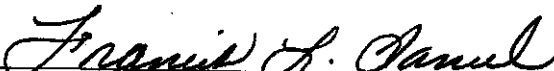
Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Plasser, for good cause shown by Plasser, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the above referenced Notice of Violation. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Plasser admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Plasser consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Plasser declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Plasser to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Plasser shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Plasser shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Plasser shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.Failure to so notify the Regional Director within 24 hours of learning of any condition above, which Plasser intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Plasser. Notwithstanding the foregoing, Plasser agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Plasser. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Plasser from its obligation to comply with any statute, regulation, Permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, Plasser voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 11th day of April, 2008.


Francis L. Daniel

Plasser American Corporation voluntarily agrees to the issuance of this Order.

By: Rob Laskowski ROBIN LASKOWSKI

Date: 12-18-2007

Commonwealth of Virginia
City/County of Chesapeake

The foregoing document was signed and acknowledged before me this 18th day of

December, 2007, by Robin Laskowski, who is
(name)

Vice President & Secretary-Treasurer
(title) of Plasser American Corporation on behalf of Plasser.



Michelle Salopek
Notary Public

My commission expires: 10/31/2011

APPENDIX A

Plasser shall:

1. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, certification of training of staff who are responsible for implementing activities identified in the SWP3 or otherwise responsible for storm water management. Training shall include guidance on spill response, good housekeeping and material management practices.
2. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, the reports of all facility inspections conducted since September 12, 2007 by or on behalf of Plasser to ensure compliance with the SWP3 and the Permit.
3. Within 30 days of the effective date of this Order submit to DEQ Tidewater Regional Office, certification that all storm water outfalls at the facility have been cleared of vegetation, dirt, debris and other solids.
4. Within 90 days of the effective date of this Order submit to DEQ Tidewater Regional Office an updated SWP3 that contains all elements required by Part III and Part IV.B (for Sector AB – Transportation Equipment, Industrial, or Commercial Machinery) of the Permit and incorporates the recommendations made by DEQ in the report of the September 12, 2007 compliance inspection. The SWP3 shall address potential sources of pollution in all six of the facility's drainage areas that may reasonably be expected to affect the quality of storm water discharges from the facility and practices that will be used in all six drainage areas, including at the associated storm water outfalls, to reduce the pollutants in storm water discharges from the facility.
5. Comply with all conditions of the Permit.
6. Mail all submittals and reports required by this Appendix A to:

Mr. Francis L. Daniel, Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462